

BUSINESS AND PROFESSIONS CODE

BUSINESS AND PROFESSIONS CODE POLLUTION CONTROL DEVICE CERTIFICATION DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY Chapter 20.3. Automotive Repair Article 7. Denial, Suspension and Revocation (Article 7 added by Stats. 1971, Ch. 1578.)

B&P 9889.1 License

9889.1. Any license issued pursuant to Articles 5 and 6, may be suspended or revoked by the director. The director may refuse to issue a license to any applicant for the reasons set forth in Section 9889.2. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

(Added by Stats. 1971, Ch. 1578.)

B&P 9889.2 Denial of License

9889.2. The director may deny a license if the applicant or any partner, officer, or director thereof:

(a) Fails to meet the qualifications established by the bureau pursuant to Articles 5 and 6 of this chapter for the issuance of the license applied for.

(b) Was previously the holder of a license issued under this chapter which license has been revoked and never reissued or which license was suspended and the terms of the suspension have not been fulfilled.

(c) Has committed any act which, if committed by any licensee, would be grounds for the suspension or revocation of a license issued pursuant to this chapter.

(d) Has committed any act involving dishonesty, fraud, or deceit whereby another is injured or whereby the applicant has benefited.

(e) Has acted in the capacity of a licensed person or firm under this chapter without having a license therefor.

(f) Has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of a crime substantially related to the qualifications, functions and duties of the license holder in question, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following such conviction, suspending the imposition of sentence, or of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the plea or verdict of guilty, or dismissing the accusation or information.

(Amended by Stats. 1978, Ch. 1161.)

B&P 9889.3 License Suspension or Revocation

9889.3. The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee or any partner, officer, or director thereof:

(a) Violates any section of the Business and Professions Code which relates to his or her licensed activities.

(b) Is convicted of any crime substantially related to the qualifications, functions and duties of the licenseholder in question.

(c) Violates any of the regulations promulgated by the director pursuant to this chapter.

(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

(e) Has misrepresented a material fact in obtaining a license.

(f) Aids or abets an unlicensed person to evade the provisions of this chapter.

(g) Fails to make and keep records showing his or her transactions as a licensee, or fails to have the records available for inspection by the director or his or her duly authorized representative for a period of not less than three years after completion of any transaction to which the records refer, or refuses to comply with a written request of the director to make the record available for inspection.

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

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(i) Is convicted of a violation of Section 551 of the Penal Code.
(Amended by Stats. 1992, Ch. 675, Sec. 2.)

B&P 9889.4 Conviction

9889.4. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The director may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

(Added by Stats. 1971, Ch. 1578.)

B&P 9889.5 Post-Hearing Disciplinary Action

9889.5. The director may take disciplinary action against any licensee after a hearing as provided in this article by any of the following:

- (a) Imposing probation upon terms and conditions to be set forth by the director.
- (b) Suspending the license.
- (c) Revoking the license.

(Added by Stats. 1971, Ch. 1578.)

B&P 9889.6 Surrender License

9889.6. Upon the effective date of any order of suspension or revocation of any license governed by this chapter, the licensee shall surrender the license to the director.

(Added by Stats. 1971, Ch. 1578.)

B&P 9889.7 Jurisdiction to Proceed with Investigation or Disciplinary Proceedings

9889.7. The expiration or suspension of a license by operation of law or by order or decision of the director or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the director of jurisdiction to proceed with any investigation of or action or disciplinary proceedings against such licensee, or to render a decision suspending or revoking such license.

(Added by Stats. 1971, Ch. 1578.)

B&P 9889.8 Filing of Accusations

9889.8. All accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging a violation of subdivision (f) of Section 9889.3, the accusation may be filed within two years after the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation prohibited by such section.

(Added by Stats. 1971, Ch. 1578.)

B&P 9889.9 Additional Licenses Revoked or Suspended

9889.9. When any license has been revoked or suspended following a hearing under the provisions of this article, any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director.

(Added by Stats. 1971, Ch. 1578.)

B&P 9889.10 Reinstatement of License

9889.10. After suspension of the license upon any of the grounds set forth in this article, the director may reinstate the license upon proof of compliance by the applicant with all provisions of the decision as to reinstatement. After revocation of a license upon any of the grounds set forth in this article, the license shall not be reinstated or reissued within a period of one year after the effective date of revocation.

(Added by Stats. 1971, Ch. 1578.)

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Article 8. Lamp and Brake Adjustment Certificates

(Heading of Article 8 amended by Stats. 1990, Ch. 1433, Sec. 8.)

B&P 9889.15 Definitions

9889.15. As used in this article, "station," "licensed station," and "licensed adjuster" have the same meaning as defined in Article 6 (commencing with Section 9888.1).

(Amended by Stats. 1990, Ch. 1433, Sec. 9.)

B&P 9889.16 Certificate of Adjustment

9889.16. Whenever a licensed adjuster in a licensed station upon an inspection or after an adjustment, made in conformity with the instructions of the bureau, determines that the lamps or the brakes upon any vehicle conform with the requirements of the Vehicle Code, he shall, when requested by the owner or driver of the vehicle, issue a certificate of adjustment on a form prescribed by the director, which certificate shall contain the date of issuance, the make and registration number of the vehicle, the name of the owner of the vehicle, and the official license of the station.

(Added by Stats. 1971, Ch. 1578.)

B&P 9889.19 Fees for Issuance of Certificates

9889.19. The director may charge a fee for lamp and brake adjustment certificates furnished to licensed stations. The fee charged shall be established by regulation and shall not produce a total estimated revenue which, together with license fees or certification fees charged pursuant to Sections 9886.3, 9887.2, and 9887.3, is in excess of the estimated total cost to the bureau of the administration of this chapter. The fee charged by licensed stations for lamp and brake adjustment certificates shall be the same amount the director charges.

(Amended by Stats. 1990, Ch. 1433, Sec. 12.)

Article 9. Penalties

(Article 9 added by Stats. 1971, Ch. 1578.)

B&P 9889.20 Violations Constitute Misdemeanor/6 Months

9889.20. Except as otherwise provided in Sections 9889.21 and 9889.48, any person who fails to comply in any respect with the provisions of this chapter is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment not exceeding six months, or by both such fine and imprisonment.

(Amended by Stats. 1982, Ch. 815, Sec. 2. Operative July 1, 1983, by Sec. 5 of Ch. 815.)

B&P 9889.21 Violations Constitute Infraction - \$50 Fine

9889.21. Any person who violates any provision of Articles 5, 6, and 7 of this chapter is guilty of an infraction and punishable as specified in subdivision (a) of Section 42001 of the Vehicle Code.

(Added by Stats. 1971, Ch. 1578.)

B&P 9889.22 False Statement Entries

9889.22. The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code.

(Added by Stats. 1986, Ch. 951, Sec. 5.)

MOTOR VEHICLE FUELS DIVISION 5. WEIGHTS AND MEASURES

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Chapter 14. Petroleum Article 5. Standards for Gasoline

B&P 13440 Adoption of Standards

13440. (a) The department shall establish specifications for automotive spark-ignition engine fuels. The department shall adopt by reference the latest standards established by a recognized consensus organization or standards writing organization such as the American Society for Testing and Materials (ASTM) or the Society of Automotive Engineers (SAE), for automotive spark-ignition engine fuel, except that no specification shall be less stringent than required by any California state law.

(b) Any gasoline-oxygenate blend containing methanol shall also contain an alcohol cosolvent (butanol or higher molecular weight alcohol) in an amount equal to or greater than the volume percentage of methanol except those blends previously granted a waiver by the Environmental Protection Agency.

(c) Any gasoline-oxygenate blend containing ethanol that complies with Section 2258 of Title 13 of the California Code of Regulations, as it reads on the effective date of the act amending this section during the 1993-94 Regular Session, or as amended, may exceed the Reid vapor pressure limits of ASTM D 4814 for the area and season in which the blend is sold at retail by not more than 6.9 kilopascals (1.0 pounds per square inch), except the total Reid vapor pressure shall not exceed 103 kilopascals (15 pounds per square inch).

(d) The antiknock index as defined in Section 13403 for gasoline and gasoline-oxygenate blends shall not be less than 87.

(e) Gasoline and gasoline-oxygenate blends shall meet the latest specifications set forth in ASTM D 4814, except that no specification shall be less stringent than required by any California state law.

(f) Notwithstanding any other provision of this section, gasoline sold for use in Inyo or Mono County, or the portion of Kern County lying east of the Los Angeles County Aqueduct, shall comply with the latest specification set forth in ASTM D 4814 relating to volatility class standards for the season during which the gasoline is sold for either the interior region or the southeast region of California, except that no specification shall be less stringent than is required by any California state law.

(Amended by Stats. 1996, Ch. 489, Sec. 1.)

B&P 13440.5 Percentage of Fuel Consisting of Alcohol

13440.5. For purposes of determining the percentage of a motor fuel (including gasohol) which consists of alcohol, the volume of alcohol includes the volume of any denaturant (including gasoline) which is added to the extent that these denaturants do not exceed 5 percent of the volume of the alcohol (including denaturants).

(Added by Stats. 1983, Ch. 1012, Sec. 2.)

B&P 13441 Conformance Specifications

13441. It is unlawful for any person to sell any product as, or purporting to be, gasoline or automotive spark-ignition engine fuel, unless the product conforms to the specifications of this article.

(Amended by Stats. 1985, Ch. 167, Sec. 2.5.)

B&P 13442 Conformance Requirements - Labeling

13442. It is unlawful for any person to sell, offer for sale, or cause or permit to be sold or offered for sale, or deliver or offer for delivery, any petroleum product as a fuel for internal combustion engines at any place where petroleum products are kept or stored for sale, which does not conform to the requirements of this article, unless and until there shall be firmly attached to or painted upon each container, receptacle, pump, and inlet end of the fill pipe of each underground storage tank, from which or into which such petroleum product is drawn or poured for sale or delivery, a sign or label, plainly visible, comprising the brand, trademark, or trade name of such fuel, or the words "no brand," which words shall be in letters of gothic type with a stroke of not less than one-eighth inch in width and not less than one inch in height, and also the words "not gasoline" in red letters of gothic type with a stroke of not less than one-half inch in width and not less than three inches in height, on a white background and not less than twice the size of any other letters or words appearing on or near the label or sign.

The provisions of this article, as to the words "not gasoline," shall not apply to signs or labels used in connection with the sale or delivery of kerosene, jet or turbine fuel, diesel fuel, liquefied petroleum gas, or motor

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fuel comprised of a mixture of gasoline and lubricating oil properly labeled in accordance with the provisions of Article 9 (commencing with Section 13480).

(Amended by Stats. 1989, Ch. 1047, Sec. 3.)

B&P 13443 Requirements for Attached Signs/Labels

13443. The sign or label required by this article to be attached to the inlet end of the fill-pipe of an underground storage tank shall consist of a tag or plate firmly attached or affixed and plainly visible while the tank is being filled. The letters on such sign or label may be of any convenient size.

(Added by Stats. 1980, Ch. 636, Sec. 5.)

Article 9. Labelling

B&P 13480 Sale of Unlabelled Product

13480. (a) It is unlawful for any person to sell any petroleum product referred to in this chapter at any place where petroleum products are kept or stored for sale, unless there is affixed to each container, receptacle, pump, dispenser, and inlet end of the fill pipe of each underground storage tank, from which or into which such product, is drawn or poured out for sale or delivery, a sign or label plainly visible consisting of the name of the product, the brand, trademark, or trade name of the product, and in the case of gasoline, diesel fuel, other motor fuel, and kerosene, the grade or brand name designation.

(b) When the product is oil, as defined by Section 13401, each sign or label shall also have in letters or numerals, plainly visible, the viscosity grade classification as determined in accordance with the Society of Automotive Engineers (SAE) latest standard for engine oil viscosity classification SAE J300 or manual transmission and axle lubricants viscosity classification SAE J306, as applicable, and shall be preceded by the letters "SAE".

(c) When the product is automotive spark-ignition engine fuel, except M-85 and M-100 methanol fuel, there shall be conspicuously displayed on the dispensing device at least one sign or label showing the minimum octane number or antiknock index, as defined in Section 13403, of the product sold therefrom.

(d) When the product is a motor fuel which contains at least 1 percent by volume ethanol (ethyl alcohol) or methanol (methyl alcohol), or a combination thereof, there shall be conspicuously displayed on the dispensing device at least one sign or label correctly stating the applicable one of the following statements:

- (1) "Contains alcohol (ethanol)."
- (2) "Contains alcohol (methanol)."
- (3) "Contains alcohol (ethanol and methanol)."

Devices dispensing M-85 or M-100 methanol fuel shall be exempt from the requirements of this subdivision if the dispenser is labeled pursuant to subdivisions (a) and (f) using the word "methanol" as the product name and M-85 or M-100, as applicable, as grade designations.

(e) When the product is a motor fuel consisting of a mixture or premixture of gasoline and oil, there shall be conspicuously displayed on the dispensing device at least one sign or label stating the ratio of gasoline to motor oil.

(f) All signs or labels required by this section for retail motor fuel dispensers and containers of more than one gallon capacity shall be in letters and numerals not less than one-half inch (12.70 mm) in height. On containers of one gallon or less, the signs or labels shall be in letters and numerals not less than one-fourth inch (6.35 mm) in height and one-sixteenth inch (1.59 mm) in width.

(g) The provisions of this section pertaining to octane numbers or antiknock index and motor oil SAE viscosity number grade shall not apply to products sold for aviation purposes.

(h) The provisions of this section shall apply, with respect to thinners or solvents, only to the sale, delivery, or offer for sale of the products through service stations, garages, and other retail outlets.

(Amended by Stats. 1989, Ch. 1047, Sec. 10.)

B&P 13561 Authorization to Sell Own Trademark

13561. This article does not prohibit any person from selling under his or her own trademarks, trade names,

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brands, or the words "no brand," the product of any manufacturer if such person has first obtained the written authorization of the true manufacturer so to sell such product.

(Added by Stats. 1980, Ch. 636, Sec. 5.)

B&P 13562 Authorization to Change Designation

13562. No person other than the true manufacturer who purchases any petroleum product shall change the designation under which the product is purchased by him or her, without a written authorization.

(Added by Stats. 1980, Ch. 636, Sec. 5.)

B&P 13568 Availability of Written Authorizations

13568. Copies of the written authorizations required by this article shall be furnished the department upon request.

(Added by Stats. 1980, Ch. 636, Sec. 5.)

Article 14. Passing Off

B&P 13570 Statement of Alcohol Content

13570. Any manufacturer, blender, agent, jobber, consignment agent, or distributor who distributes motor fuel products which contain at least 1 percent alcohol by volume, shall state on an invoice, bill of lading, shipping paper, or other documentation used in normal and customary business practices, the percentage of alcohol, the type of alcohol, and, except in documentation certifying the octane rating of gasoline as required by federal law, the minimum antiknock index number, as defined in Section 13403, of the products distributed. This section, as it relates to certification of the minimum antiknock index number, applies to all motor vehicle gasoline distributed.

(Amended by Stats. 1985, Ch. 167, Sec. 10.)

B&P 13571 Availability of Documentation

13571. Copies of the documentation specified in Section 13570 shall be available for inspection during business hours by duly authorized representatives of the department.

(Added by Stats. 1983, Ch. 1012, Sec. 5.)

REPRESENTATIONS TO THE PUBLIC

DIVISION 7. GENERAL BUSINESS REGULATIONS

B&P 17200 Unfair Competition Definition

17200. As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

(Amended by Stats. 1992, Ch. 430, Sec. 2.)

B&P 17201 Person Defined

17201. As used in this chapter, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

(Added by Stats. 1977, Ch. 299.)

B&P 17201.5 Board Within Dept. of Consumer Affairs/Local Consumer Affairs Agency

17201.5. As used in this chapter:

(a) "Board within the Department of Consumer Affairs" includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

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(b) "Local consumer affairs agency" means and includes any city or county body which primarily provides consumer protection services.

(Added by Stats. 1979, Ch. 897.)

B&P 17202 Specific or Preventive Relief

17202. Notwithstanding Section 3369 of the Civil Code, specific or preventive relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition.

(Added by Stats. 1977, Ch. 299.)

B&P 17203 Equity Remedies

17203. Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

(Amended by Stats. 1992, Ch. 430, Sec. 3.)

B&P 17204 Relief Actions

17204. Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

(Amended by Stats. 1993, Ch. 926, Sec. 2.)

B&P 17204.5 Authority to Prosecute

17204.5. In addition to the persons authorized to bring an action pursuant to Section 17204, the City Attorney of the City of San Jose, with the annual consent of the Santa Clara County District Attorney, is authorized to prosecute those actions. This section shall remain in effect until such time as the population of the City of San Jose exceeds 750,000, as determined by the Population Research Unit of the Department of Finance, and at that time shall be repealed.

(Added by Stats. 1988, Ch. 790, Sec. 1. Conditionally repealed by its own provisions.)

B&P 17205 Cumulative Penalties

17205. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

(Added by Stats. 1977, Ch. 299.)

B&P 17206 Civil Penalty

17206. (a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the

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civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

(e) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

(Amended by Stats. 1992, Ch. 430, Sec. 4.)

B&P 17206.1 Liability for Civil Penalty

17206.1. (a) In addition to any liability for a civil penalty pursuant to Section 17206, any person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which may be assessed and recovered in a civil action as prescribed in Section 17206. Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, the following terms have the following meanings:

(1) "Senior citizen" means a person who is 65 years of age or older.

(2) "Disabled person" means any person who has a physical or mental impairment which substantially limits one or more major life activities.

(A) As used in this subdivision, "physical or mental impairment" means any of the following:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and emotional illness.

(B) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(C) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof,

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the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) Any court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as may be necessary to restore to any senior citizen or disabled person any money or property, real or personal, which may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of any civil penalty designated by the court as imposed pursuant to subdivision (a), but shall not be given priority over any civil penalty imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

(Added by Stats. 1988, Ch. 823, Sec. 1.)

B&P 17206.5 Authority to Prosecute

17206.5. In addition to the persons authorized to bring an action pursuant to Section 17206, the City Attorney of the City of San Jose, with the annual consent of the Santa Clara County District Attorney, is authorized to prosecute those actions. This section shall remain in effect until such time as the population of the City of San Jose exceeds 750,000, as determined by the Population Research Unit of the Department of Finance, and at that time shall be repealed.

(Added by Stats. 1988, Ch. 790, Sec. 2. Conditionally repealed by its own provisions.)

B&P 17207 Violation of Injunction

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars (\$6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of that conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of that conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney in any court of competent jurisdiction within his or her jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the

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city, except that if the action was brought by a city attorney of a city and county the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment is entered.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of the reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of the reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

(Amended by Stats. 1991, Ch. 1196, Sec. 3.)

B&P 17208 Cause of Action

17208. Any action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this section shall be revived by its enactment.

(Added by Stats. 1977, Ch. 299.)

B&P 17209 Notice of Appellate Proceeding

17209. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate department of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

(Added by Stats. 1992, Ch. 385, Sec. 2.)

FALSE ADVERTISING

B&P 17500 False and Misleading Statements

17500. It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

(Amended by Stats. 1979, Ch. 492.)

B&P 17502 Applicability to Media

17502. This article does not apply to any visual or sound radio broadcasting station or to any publisher of a

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newspaper, magazine, or other publication, who broadcasts or publishes an advertisement in good faith, without knowledge of its false, deceptive, or misleading character.

(Amended by Stats. 1951, Ch. 627.)

B&P 17534 Violation Penalty--Criminal

17534. Any person, firm, corporation, partnership or association or any employee or agent thereof who violates this chapter is guilty of a misdemeanor.

(Added by Stats. 1941, Ch. 63.)

B&P 17534.5 Cumulative Penalties

17534.5. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

(Added by Stats. 1973, Ch. 393.)

B&P 17535 Injunctive Relief

17535. Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

(Amended by Stats. 1972, Ch. 711, Sec. 3.)

B&P 17535.5 Injunctive Violation

17535.5. (a) Any person who intentionally violates any injunction issued pursuant to Section 17535 shall be liable for a civil penalty not to exceed six thousand dollars (\$6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

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Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

(Amended by Stats. 1979, Ch. 897.)

B&P 17536 Civil Penalty

17536. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

(e) As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

(Amended by Stats. 1992, Ch. 430, Sec. 5.)